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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

19 CR 921 (AKH)
Remote Conference

5 NICHOLAS TRUGLIA,

6 Defendant.

7 -----x

8 New York, N.Y.
9 March 30, 2021
11:10 a.m.

10 Before:

11 HON. ALVIN K. HELLERSTEIN,

12 District Judge

13 APPEARANCES

14 AUDREY STRAUSS,

15 United States Attorney for the
Southern District of New York

16 TIMOTHY V. CAPOZZI

Assistant United States Attorney

17 DAVID PATTON

18 FEDERAL DEFENDERS OF NEW YORK

Attorney for Defendant

19 BY: MARK GOMBINER

20 ALSO PRESENT:

21 DENNIS KHILKEVICH, Pretrial (SDNY)

22 CHARLES SWEATT, Pretrial (Middle District of Florida)

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(The Court and all parties appearing telephonically)

(Case called)

THE DEPUTY CLERK: Counsel, please state your
appearances for the record.

MR. CAPOZZI: Good afternoon, your Honor. Timothy
Capozzi for the United States.

THE COURT: Good afternoon.

MR. GOMBINER: Mark Gombiner, Federal Defenders, for
Mr. Truglia.

THE COURT: Good afternoon. Keep your voice up,
Mr. Gombiner. It is hard to hear you.

MR. GOMBINER: Mark Gombiner, Federal Defenders, for
Mr. Truglia. Good afternoon.

THE COURT: Good afternoon.

Mr. Truglia, are you on the line?

THE DEFENDANT: Yes, I am.

THE COURT: Good afternoon.

THE DEFENDANT: Good afternoon, your Honor.

THE COURT: I think Mr. Khilkevich and Mr. Sweatt are
on the line from Pretrial Services in New York and Orlando,
Florida, respectively.

The court reporter, Jennifer is, on the line as well.

Mr. Capozzi, you open up.

MR. CAPOZZI: Thank you, Judge.

The Court received the letter that I sent a week or so

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1 ago.

2 THE COURT: The Court has received it.

3 MR. CAPOZZI: Thank you, Judge.

4 The defendant here is charged in this case with
5 participating in a scheme in which he and his co-conspirators
6 used phones and computers to steal approximately \$24 million
7 worth of cryptocurrency from a victim. The defendant is --

8 THE COURT: I read the indictment and I read your
9 letter. Let's go immediately to the alleged violations.

10 MR. CAPOZZI: Your Honor, the defendant is prohibited
11 from his bail conditions from using or possessing
12 internet-enabled electronic devices, which would include cell
13 phones and computers. As set forth in the letter, the
14 government had very good reason to believe that he has violated
15 that condition both in this past December as well as, more
16 recently, in March.

17 THE COURT: You'll have to tell me more than you have
18 good reason. You have to convince me.

19 MR. CAPOZZI: Your Honor, in December, we, the
20 government, received copies of communications that were made
21 via, among other things, the WhatsApp messaging platform. And
22 after receiving those -- the recipients of those messages know
23 the defendant and believed that the defendant had sent those
24 messages to them, based on the content of the communication.
25 Upon receipt of those communications, the government obtained

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1 records from WhatsApp, which linked the communications to an IP
2 address. The government received records from Charter
3 Communications, which linked that IP address to an address
4 which I believe is the address at which the defendant is
5 currently residing pursuant to the Court's condition that he be
6 under home detention.

7 In addition, then, more recently, the same individual
8 or individuals who received messages back in December, again
9 received communications that they believed were from the
10 defendant based on the contents, and we sent a copy of these
11 communications. Some of them indeed used his actual name.

12 THE COURT: Where can I see that?

13 MR. CAPOZZI: Your Honor, if you have a copy of
14 Exhibit A --

15 THE COURT: One minute.

16 I have it.

17 MR. CAPOZZI: It's a five-page document.

18 THE COURT: I only saw one page.

19 MR. CAPOZZI: Okay.

20 THE COURT: I have it. How do you attribute it to the
21 defendant?

22 MR. CAPOZZI: Your Honor, Exhibit A, page 2, shows a
23 reference halfway down the page. There's a question and I
24 believe this is from the recipient of the message responding to
25 the message: Mr. Truglia, how have you been? Which garners a

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1 response that, is not -- that is simply a response: Better
2 than, I see. It is not a response that the person does not
3 know why he is being referred to as Mr. Truglia. Clearly's,
4 that's this defendant's last names.

5 These messages on page 1 --

6 THE COURT: So there is an inquiry by the recipient,
7 Mr. Truglia: How have you been? That is at 9:13 p.m. And the
8 answer is: Better than you, I see?

9 MR. CAPOZZI: Correct.

10 THE COURT: Is that Mr. Truglia's answer?

11 MR. CAPOZZI: That's my understanding of this
12 communication.

13 THE COURT: Because he has been called Mr. Truglia?

14 MR. CAPOZZI: Correct.

15 THE COURT: And then it's repeated by whoever is on
16 212-810-9167. His answer is: Love to hear it.

17 MR. CAPOZZI: Correct.

18 THE COURT: And then the response is: We have
19 unfinished business, if I recall correctly.

20 Go ahead.

21 MR. CAPOZZI: Correct. Thank you, Judge.

22 Page 1 and 2 of this document are the examples of the
23 December communication that we subsequently linked to the
24 defendant via the records from WhatsApp and Charter
25 Communication.

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1 On page 3, we are now in the March time frame, and if
2 you proceed to the final page of the document, you see an image
3 of what appears to be the defendant, and it bears the name
4 "Nicholas," which is this defendant's first name. And then
5 towards the bottom of that message -- the bottom of that page,
6 rather, you see, next to that image of what appears to be the
7 defendant, a question: "Miss me?" And then you see there is
8 an indication -- a question from the messaging platform whether
9 or not the recipient of the message accepts the message request
10 from, parentheses, "Nicholas," question mark.

11 THE COURT: And he answers, "Accept"?

12 MR. CAPOZZI: I don't know in fact whether or not -- I
13 see that the "accept" is in white lettering as opposed to the
14 others. I don't know that that actually indicates that the
15 message was in fact accepted or not.

16 THE COURT: Higher up on the page there a reference to
17 64 followers to Nicholas's Instagram.

18 What do you make of that?

19 MR. CAPOZZI: Correct.

20 Your Honor, I don't -- I only know -- I can only speak
21 to what I see on the page. That would suggest to me that he
22 has -- that this Instagram account has 64 followers. I do not
23 know -- I do not have the records to tell me when this
24 Instagram account was opened and when those followers were
25 obtained, if in fact this is what we believe it to be.

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1 THE COURT: Is there anything significance to Host C
2 Conseco?

3 MR. CAPOZZI: I do not know the significance, if there
4 is any.

5 THE COURT: Then there is a threat on page 1.

6 MR. CAPOZZI: Correct.

7 THE COURT: Any significance to this VOSR of the
8 threat?

9 MR. CAPOZZI: Well, your Honor, the individual who
10 received these messages has a history with the defendant, and
11 that history includes a criminal case that was filed,
12 initiated, in state court in Manhattan. Based on the media
13 reporting of that criminal case, there were allegations made by
14 this defendant alleging that the people who include the
15 recipient of these messages made an attempt to steal the
16 defendant's cryptocurrency. The recipients of these messages,
17 I have not spoken directly to, but I have communicated with
18 their counsel, and their counsel have communicated that they
19 certainly view these as threatening messages, in part --

20 THE COURT: Let me be specific.

21 There is an indication here that someone sent -- and
22 if it is all the Instagram of Nicholas Truglia, the inference
23 is that Nicholas Truglia sent the message as follows: If you
24 value your little hotel and Tequila deals, you'll start playing
25 it straight with me. I am not giving you much longer. Call

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1 me. Otherwise, you should just tell him to call ahead of time.

2 MR. CAPOZZI: Correct your Honor. Clearly, on the
3 face of that, that seems threatening.

4 THE COURT: Is that on the period that conditions were
5 set by Judge Lehrburger not to use the internet?

6 MR. CAPOZZI: Those messages were sent in December of
7 2020. The conditions were ordered by the Court in, I believe,
8 April of 2020. So, yes, this is all during the period where
9 these conditions apply.

10 THE COURT: Where is the defendant now?

11 MR. CAPOZZI: Your Honor, the defendant is in Florida.

12 THE COURT: How is he in Florida when he restricted to
13 New York, New Jersey and the Northern District of --

14 MR. CAPOZZI: Your Honor, the defendant -- I believe
15 it was that the defendant was residing with his father in New
16 Jersey. The father moved to Florida, and I believe that
17 defense counsel put in a request, which was endorsed, allowing
18 for the transfer of his residence from New Jersey to Florida.

19 MR. GOMBINER: Judge, he is still living with his
20 father in Florida, and is he on home detention. That's why he
21 is now residing in Florida, because that is where his father
22 lives.

23 THE COURT: Thank you, Mr. Gombiner.

24 Anything else, Mr. Capozzi?

25 MR. CAPOZZI: Your Honor, I would just add that the

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1 defendant had existing criminal charges in California which
2 have the same conditions. So to the extent these
3 communications violate this Court's conditions, they are also
4 violating state court conditions in California.

5 THE COURT: Mr. Capozzi --

6 MR. CAPOZZI: Sorry, your Honor. I didn't quite hear
7 you.

8 THE COURT: This doesn't concern me, does it, that he
9 may be violating California's requirements?

10 MR. CAPOZZI: Only to the extent that it shows his
11 failure to comply with multiple courts.

12 THE COURT: Well, it's the same conduct, so my --

13 MR. CAPOZZI: Yes, your Honor.

14 THE COURT: -- focus is not on any California state
15 court judge's case.

16 MR. CAPOZZI: Fair enough, your Honor.

17 THE COURT: So, bottom line, the condition that is
18 allegedly violated is Judge Lehrburger's condition, which was
19 supposedly met on April 29th, 2020 -- no access to
20 internet-accessible devices, including computers, cell phones,
21 etc.; no possession of personally identifying identification of
22 others -- what is the first one -- no access to internet? The
23 government contends it has violated that; correct?

24 MR. CAPOZZI: Correct, your Honor.

25 THE COURT: That is a condition that was imposed on

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1 April 29th, 2020?

2 MR. CAPOZZI: I believe it was April 15th, if I have
3 my date correct, 2020.

4 THE COURT: His remaining conditions to be met by
5 4-29-2020?

6 MR. CAPOZZI: Correct, your Honor, that's correct.

7 THE COURT: How do we know that that threat in April
8 on Exhibit A was made for April 29th, 2020?

9 MR. CAPOZZI: Your Honor, these messages are from
10 December 2020.

11 THE COURT: Okay. Mr. Gombiner.

12 MR. GOMBINER: Judge, you know, I am not really like a
13 computer expert to the extent I can determine who actually sent
14 these messages because, you know, it's obviously very easy over
15 the internet to impersonate someone. Putting that aside, what
16 I would point out is that Mr. Truglia has been out on home
17 detention for almost a year. This is the first instance where
18 there has been any accusation of any violation of his
19 conditions.

20 Secondly, although I would agree that these comments
21 in these messages could be construed as threats, I don't
22 believe that they can be construed as illegal threats. I think
23 essentially what the threat is, I am going to go to the media.
24 Now, maybe that would be unpleasant. In one sense of the word,
25 that is threatening, but I don't think that is conduct that

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1 could be considered, the underlying conduct could be considered
2 criminal, and there is no allegation here that is it criminal.

3 So I am instructing Mr. Truglia very firmly that he is
4 not --

5 THE COURT: That's not a threat? If you value your
6 little hotel and Tequila deals, you better get straight with
7 me?

8 MR. GOMBINER: I think that's what it refers to is, if
9 I go to the media and this is all over the thing, your hotel
10 and Tequila deals may go south. Judge, this is -- I am not
11 saying that if -- assuming, which I am not conceding that
12 Mr. Truglia was the one who said these things, obviously, there
13 that would be something that would probably be better not said.

14 There is, as the government has noted, these
15 individuals who were the recipients of this were previously
16 accused of criminal conduct by Mr. Truglia. I think this is
17 sort of a rabbit hole that is going to take a long time to dig
18 our way out of.

19 THE COURT: Page 2 indicates that the person who was
20 giving the message didn't identify himself.

21 MR. GOMBINER: Right.

22 THE COURT: Who is this -- the WhatsApp has no name,
23 and the --

24 MR. GOMBINER: Judge, I have no idea, honestly. I am
25 really not in a position to make any --

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1 THE COURT: Mr. Gombiner --

2 MR. GOMBINER: Yes, Judge. Sorry.

3 THE COURT: The response is: I think we should have a
4 chat soon. And then the answer is: Mr. Truglia, how have you
5 been? And there's a positive answer of identification. So
6 it's prima facie a violation --

7 MR. GOMBINER: Judge, I would, agree, prima facie, it
8 is a prima facie, if you just take this on the simplest way of
9 looking at it, yes, it's a violation. What I am saying is that
10 I don't think the violation involves -- the violation is
11 essentially utilizing an internet device when you are not
12 supposed to be using one. If that is true, that is a
13 violation. So I would concede that.

14 I would just say that Mr. Truglia has been on home
15 detention for a year. There haven't been any other allegations
16 that he has done anything else wrong, and I think that -- as I
17 said, I have given him the most specific instructions, that he
18 has not to have any kind of access to the internet, which is,
19 obviously, in today's world, for many people, being with --
20 that's a very difficult thing to comply with, but, you know,
21 that is the condition, that is the condition of his release, so
22 that's what I have told him very specifically. He does not
23 have the right to have any kind of internet access device. He
24 can use his telephone if he wants to call someone.

25 Given that, and particularly given that he is still

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1 trying to work out this case in California, which I think might
2 very well control how this case is resolved, I think the
3 appropriate thing to do here is for the Court to instruct
4 Mr. Truglia about the fact that he cannot access the internet
5 at all, regardless of what he might desire to do, and that --

6 THE COURT: An internet accessible device.

7 MR. GOMBINER: Right. He is not supposed to have any
8 internet accessible device. It includes an iPhone or a
9 computer that has any kind of internet access. I guess could
10 you have a computer, but not one that is capable of accessing
11 the internet. I think those are still available. I think
12 that's what should happen here.

13 I am not in a position to say whether this is
14 Mr. Truglia or not. I think this is a little bit -- you have
15 to make some inferences. But I understand the Court's
16 position, that you could certainly, by a preponderance, you
17 could conclude it is Mr. Truglia. I don't want to argue about
18 that as much as what is the appropriate way going forward is.
19 I think my suggestion is the right one.

20 THE COURT: Mr. Capozzi, what does the government
21 want?

22 MR. CAPOZZI: Your Honor, we think it more than meets
23 the burden.

24 THE COURT: What is it that you want? What relief do
25 you want me to give you?

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1 MR. CAPOZZI: Your Honor, the defendant has proven he
2 is he unwilling or unable to not use electronic devices.
3 Pretrial I don't think has any mechanism other than what they
4 attempted in terms of preventing him from using such devices.
5 So I don't know that there is an option short of remand that
6 can give the Court assurance of compliance.

7 THE COURT: Do you want me to remand Mr. Truglia?

8 Does the government want me to remand Mr. Truglia?

9 MR. CAPOZZI: Your Honor, I believe that in order
10 to -- listen, your Honor, I concede that this is a difficult
11 case, and I don't make the recommendation lightly to remand
12 someone, which is why I am hesitating, your Honor, because I
13 concede it is difficult. Your Honor, I think it appears there
14 is no set of conditions that will adequately protect the
15 public, because of this defendant's proven repeated conduct
16 here.

17 MR. GOMBINER: Let me say two things.

18 One, I think there is one condition. The Court could
19 authorize Pretrial Services to conduct unannounced searches of
20 Mr. Truglia's residence, which would be one way of -- other
21 than telling him not to do --

22 THE COURT: Mr. Gombiner, that will not work.

23 MR. GOMBINER: So, Judge, if that won't work, I don't
24 think that using a -- I know this -- I am not saying is not a
25 serious violation. Obviously, I am taking it seriously and

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1 Mr. Truglia is taking it seriously.

2 THE COURT: What do you want me to do to assure there
3 isn't a repetition of conduct? The government says I should
4 remand him. You say I should just admonish him, but that
5 didn't do any good. What is the point of that?

6 MR. GOMBINER: Judge, you haven't previously. You are
7 a more persuasive voice, and you are good at settling cases and
8 you are good at, I think, probably getting people to do what
9 they are supposed to do. So I wouldn't say that, you know,
10 that's a totally futile approach to things in and of itself.

11 I think the other thing is that Mr. Truglia is now
12 aware that, assuming he did make these communications that the
13 government has ways of ascertaining -- which does seem to be
14 true that -- they have ways of ascertaining whether he is using
15 the internet that don't depend on somebody searching his house
16 and finding a computer device. That is what society is using.
17 It is easy to impersonate people but it is easy to find people
18 who are -- there are lots of ways -- if you have the right
19 tools, you can discover what is going on with someone.

20 THE COURT: The government didn't know until well
21 after the event.

22 MR. GOMBINER: They knew, actually, fairly soon after
23 the event.

24 THE COURT: The recipient of the message told the
25 government.

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1 MR. GOMBINER: Yes.

2 THE COURT: So if the recipient is sufficiently
3 threatened, he will not tell the government because he is
4 afraid to.

5 MR. GOMBINER: I am not sure. I don't want to get
6 into that. It's all speculation, so I am not going to go down
7 that road.

8 THE COURT: I don't see any practical suggestion on
9 your part, Mr. Gombiner.

10 MR. GOMBINER: Judge, I am not sure what practical
11 suggestion I can have. I mean, one way is to, like, see if you
12 can do just a physical inspection, determine whether the
13 defendant, whether Mr. Truglia, has any internet access devices
14 in his possession. That is one thing you could do.

15 A second thing you could do is just for the Court,
16 rather than me or Pretrial Services, to instruct them on the
17 importance of not accessing or having possession of or access
18 to any internet-capable devices. That is a second suggestion.

19 I mean, I don't know. There are only so many things I
20 can say. It's like telling somebody, don't commit a crime. Of
21 course, there is nothing, in one sense, you can do from
22 stopping someone from doing something wrong, but it doesn't
23 mean that we remand anyone every time that they violate some
24 condition of their supervised release. He has been out for
25 over a year. These are the first allegations of anything else

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1 like this.

2 THE COURT: Tell you what, Mr. Gombiner, we're going
3 to recess for 10 minutes.

4 MR. GOMBINER: Okay.

5 THE COURT: You talk to your client.

6 MR. GOMBINER: Okay.

7 THE COURT: Find out from your client how he could
8 create confidence on the part of the government and the judge
9 and he will not be any source of alleged violation of the
10 conditions of his release.

11 MR. GOMBINER: Okay. Thank you, Judge.

12 Mr. Truglia, can you call me when I hang up here?

13 THE DEFENDANT: Yes. I can.

14 MR. GOMBINER: Thank you, Judge. Should we call back
15 in ten minutes?

16 THE COURT: Brigitte, how should we handle this?

17 THE DEPUTY CLERK: Call back in ten minutes.

18 THE COURT: Call back.

19 MR. GOMBINER: We'll call back this number in ten
20 minutes.

21 THE COURT: Okay.

22 MR. GOMBINER: Thank you, Judge. Bye-bye.

23 (Pause)

24 THE COURT: Mr. Khilkevich and Mr. Sweatt, do we have
25 any suggestions before we resume?

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1 MR. KHILKEVICH: Dennis Khilkevich from Southern
2 District New York. I just want to raise a couple of points.

3 Mr. Truglia has been out on bail since April, so for
4 approximately a year. He has never been supervised locally.
5 He resided in New Jersey; now he resides in Florida. We have
6 been in contact with the supervising officers currently in
7 Florida, and it is our understanding that all the routine
8 conversations and home visits have not revealed any violations.
9 Mr. Truglia insists that he did not have any access or possess
10 any internet devices. So, as it stands right now, we are not
11 sure what devices he uses, and he has not made any statements
12 about using anything.

13 So we would like to know, if the Court continues bail
14 in this case, what he is specifically using so we can maybe
15 figure out a way for him not to use it.

16 THE COURT: That is a good suggestion.

17 Mr. Sweatt?

18 MR. SWEATT: No, your Honor. Just to reiterate, there
19 has been no indication of noncompliance on my part since I
20 supervised the defendant here in Florida.

21 THE COURT: Where is the defendant live, Orlando?

22 MR. SWEATT: Yes, Winter Park, Florida, which is a
23 small city just outside of Orlando.

24 THE COURT: Are you based in Orlando?

25 MR. SWEATT: Yes, your Honor.

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1 THE COURT: Are you able to make any home visits?

2 MR. SWEATT: Yes, your Honor.

3 Due to COVID-19, right now, they have been modified,
4 primarily. Previously, we had virtual home assessments, as we
5 have been directed to not to enter residences through our
6 management. Mr. Truglia previously used his father's cell
7 phone, if I recall correctly, to conduct that virtual contact
8 simply for that purpose, but even during those modified visits,
9 Mr. Truglia and I addressed internet access, and he said no
10 internet use.

11 THE COURT: Would you know if his father's phone had
12 internet access?

13 MR. SWEATT: From my understanding, your Honor, it
14 does, in his father's position, in order to facilitate -- I
15 can't recall immediately whether it was WhatsApp or FaceTime,
16 but it had internet access to facilitate that call, for us to
17 do the modified virtual home assessments.

18 THE COURT: Does he have a landline in his home?

19 MR. SWEATT: Yes, your Honor. He just recently got
20 one in the last few months. There was one that had been placed
21 at the residence. Previously, he used his father's cell phone
22 just to report in, only for that purpose. I was able to get in
23 touch with his father whenever I needed to contact him.

24 THE COURT: But now he has a landline?

25 THE DEFENDANT: Yes, your Honor.

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1 THE COURT: I assume that I can order him to get a
2 flip phone that has no internet access?

3 MR. SWEATT: Yes, your Honor. We can ask to verify
4 and see direct contact, yes, your Honor.

5 THE COURT: Are you able to give him a flip phone?

6 MR. SWEATT: I would have to check with our funding
7 here. I have never had that process used for funding.

8 THE COURT: That would be a good method of control.

9 MR. GOMBINER: I think Mr. Truglia's father is in a
10 position to purchase a flip phone for him.

11 THE COURT: But the idea of having connection to
12 Pretrial Services might be a good idea.

13 What is it that you suggest, Mr. Gombiner?

14 MR. GOMBINER: Judge, I didn't come up with anything
15 that different. One thing that might help somewhat is that we
16 could do virtual home inspections using FaceTime and having his
17 father, you know, use his phone. I am not sure, like, if that
18 is a hundred percent effective.

19 THE COURT: On a forbidden use of his father's phone.

20 MR. GOMBINER: No, no. His father could be there --

21 THE COURT: I want to forbid him.

22 MR. GOMBINER: Oh. I was going to say his father
23 would be using the phone, not Mr. Truglia. That would be the
24 idea.

25 I think the best thing is to have -- you know,

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1 Mr. Truglia is using the landline right now to speak to the
2 Court, so I think if he had a flip phone, which I know they
3 still make, that he could use, that doesn't have any access
4 capability, and if he was aware that pretrial got the
5 capability to make, you know, unannounced home inspections --
6 particularly given that, I don't think -- I know we're sort of
7 going on the assumption that he did use internet devices to
8 make these communications. I just want to be clear, we're not
9 conceding that happened, and I think people who are recipients
10 of these messages have a history of maybe making some --
11 manufacturing some evidence.

12 But without getting into that, because I think it is a
13 very complicated thing, I do think that, given the rest of
14 history in Pretrial Services, and also given the fact that
15 Mr. Truglia is under psychiatric care, where he is getting
16 medications and where that is going to be a huge problem if he
17 is remanded, I do think that it would be better to adopt some
18 of the suggestions of Pretrial Services. I think that is going
19 to work. I don't think there are going to be any further
20 instances where the Court is going to hear about any problems.
21 I am pretty confident that is the case.

22 THE COURT: Mr. Capozzi, should I ask the defendant to
23 plead to the VOSR and you'll prepare to introduce evidence?

24 MR. CAPOZZI: Your Honor, he's on release.

25 THE COURT: Sorry. That's wrong. Excuse me. I take

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1 it back.

2 MR. CAPOZZI: Here is what I am going to do: I am not
3 going to remand Mr. Truglia at this time, provided that he have
4 no further use of his father's telephone, and that should be
5 made known to his father; that all communications will either
6 be through a landline or through a flip phone that has no
7 access to the internet. If defendant uses a computer, that
8 computer must be identified to Mr. Sweatt, and any ISP on that
9 computer that would allow access to the internet must be
10 disabled.

11 Mr. Sweatt, do you think those are adequate?

12 MR. SWEATT: Yes, your Honor. Anytime the defendant
13 needs to have access or use, I will verify with them to provide
14 any documentation or information for his use, yes, your Honor.

15 THE COURT: So those conditions will be applied.

16 Mr. Truglia, by a very slim margin, you are not
17 remanded. That means I am not putting you in jail to await
18 trial. If you're wise, you'll make sure that there are no
19 other even remote possibilities that you have access to the
20 internet, because next time it is very highly likely that you
21 will be in jail.

22 The government, in my judgment, is able to prove, by a
23 preponderance of evidence, that you used the internet, two
24 times at least, and that the use of the internet was to convey
25 a threat along the lines that you are indicted on. If I need

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1 to, I can make those findings. And within those findings,
2 there will be no condition or set of conditions that would
3 assure an absence of danger to the community. I am not going
4 to do that, but you should make yourself aware that you escaped
5 jail by the skin of your teeth. Make sure that you comply
6 fully with the conditions which are set.

7 Mr. Capozzi, would you please present an order for me
8 to sign and establish the new conditions and reestablish the
9 old conditions?

10 MR. CAPOZZI: Yes, your Honor.

11 THE COURT: Is there anything further to do today?

12 MR. GOMBINER: No, Judge. Thank you.

13 MR. CAPOZZI: Your Honor, briefly. We're on your
14 Honor's calendar for just a regular conference in this case on
15 Thursday of this week. I don't know if -- we can just dial
16 back in on Thursday, which is fine, or --

17 THE DEPUTY CLERK: I took that off, Judge. I put that
18 on for today.

19 MR. CAPOZZI: Okay.

20 MR. GOMBINER: That's good, because I am trying to
21 work on my tennis game down here in South Carolina. I want to
22 keep that time open.

23 MR. CAPOZZI: Your Honor, perhaps the parties -- I can
24 confer with Mr. Gombiner, and the parties will put in a letter
25 concerning a view on when we should schedule a further

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1 conference in the case, and I expect that request will include
2 a request for exclusion of time. As of now, time is excluded
3 until this Thursday, so we'll be sure to put in a letter that
4 allows for the Court, if the Court is inclined, to exclude time
5 going forward to that date.

6 THE COURT: I will exclude time.

7 Has all production and discovery been made?

8 MR. CAPOZZI: Your Honor, the majority of it has been
9 made. There are a few -- there are some materials that I
10 expect to produce in the next couple weeks, of additional
11 electronic accounts. So we're nearing the end of production of
12 discovery.

13 THE COURT: How far ahead can I look?

14 MR. CAPOZZI: For a date for a conference?

15 THE COURT: When you finish discovery?

16 MR. CAPOZZI: Your Honor, I expect it will be done at
17 the end of April.

18 THE COURT: Why so long?

19 MR. CAPOZZI: Your Honor, the remaining materials
20 include email accounts, not of the defendant but of others,
21 which have required involvement of privilege review and a taint
22 filter. That is my hesitation, which is just to allow
23 resolution of the questions related to the taint team's work.

24 THE COURT: I should next see you in May, with the
25 idea that there will either be a plea or a trial date.

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1 THE DEPUTY CLERK: Judge, how about May 21st at noon?

2 THE COURT: Just a minute.

3 Before you do that, what do you think, Mr. Capozzi?

4 MR. CAPOZZI: Your Honor, as of the next day, there
5 either will be a plea or for setting a trial date?

6 THE COURT: Yes. If there is no plea discussion going
7 on, we will set a trial date.

8 MR. CAPOZZI: That's fine with the government, your
9 Honor. I don't know if the defendant has any anticipated
10 motions to file.

11 THE COURT: Do you, Mr. Gombiner?

12 MR. GOMBINER: Judge, right now, we don't have any --
13 you know, other than possibly some in limine motions, but I
14 think by May 21st we'll be in a position to tell the Court
15 whether there is -- we'll be in a position to ask for a trial
16 date unless there is a disposition. So I think that would work
17 for us.

18 THE COURT: Should I adjourn this to May 21?

19 THE DEPUTY CLERK: At noon.

20 THE COURT: We'll adjourn to May 21 at noon.

21 Time is excluded until May 21. I take it the
22 government so moves, does it not, Mr. Capozzi?

23 MR. CAPOZZI: It does, your Honor.

24 MR. GOMBINER: No objection, Judge.

25 THE COURT: On the ground that the further production

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1 has to be made and the production has to take time because of
2 the need to deal with third-party sources and other problems,
3 but that production will be completed by the end of April.

4 Right, Mr. Capozzi?

5 MR. CAPOZZI: Yes, your Honor.

6 It occurred to me after I spoke, the only other
7 outstanding discovery that will not likely be produced is, we
8 have some pending MLAT requests overseas records. We'll
9 produce those as soon as they are received by the government.
10 They are not the bulk of the production by any stretch, but
11 they are outstanding. I do not know the likelihood that we'll
12 get them back within the next 30 days.

13 MR. GOMBINER: Judge, that won't prevent us from being
14 able to say whether we're going to want a trial or not.

15 THE COURT: The motions will be declared along with
16 trial dates with response dates, and we'll go from there.

17 MR. GOMBINER: Thank you, Judge.

18 THE COURT: See you May 21 at noon.

19 MR. GOMBINER: Thank you.

20 THE COURT: Have we issued a *Brady* order in this case?

21 MR. CAPOZZI: You have, your Honor.

22 THE COURT: The government knows what its obligations
23 are under *Brady*?

24 MR. CAPOZZI: It does, your Honor.

25 THE COURT: I should have started this with findings

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1 under the Cares Act – that I am authorized, because of the
2 pandemic and because of other inconveniences, including the
3 distance between Florida and the necessity for travel between
4 Florida and New York, to dispense with the requirement of
5 proceeding in open court. I am authorized to conduct this
6 proceeding by telephone provided that defendant accepts.

7 Do you accept, Mr. Truglia?

8 THE DEFENDANT: Yes, I do.

9 THE COURT: I think that covers everything. See you
10 May 21. Good-bye.

11 MR. GOMBINER: Thank you, Judge.

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